

**SUPERIOR COURT  
(Class Action)**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**No.: 500-06-000910-188**

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**JENNIFER BALABANIAN**

Plaintiff

v.

**PAYPAL CANADA CO.**

-and-

**PAYPAL CA LIMITED**

-and-

**PAYPAL HOLDINGS INC.**

Defendants

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**AMENDED APPLICATION OF THE DEFENDANTS FOR LEAVE TO ADDUCE  
RELEVANT EVIDENCE  
(article 574 C.C.P.)**

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**TO THE CASE MANAGEMENT JUDGE TO BE APPOINTED HEREIN, THE DEFENDANTS  
RESPECTFULLY SUBMIT THE FOLLOWING:**

**A. Introduction**

1. The Defendants hereby respectfully seek permission to adduce relevant evidence by way of filing the affidavits of four (4) representatives, Omar Paz, Amy Stohlman, Ryan May and Brian Yamasaki, the 47 versions of PayPal's User Agreement since June 20, 2007 as well as a video of the checkout flow of the most frequently used platform by Québec customers into the Court Record prior to the Hearing on the *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff*, dated February 28, 2018 (the "**Application**").

## **B. The Procedural Context**

2. In the Application, the Plaintiff seeks leave from this Court to institute a class action against the Defendants on behalf of the following group:

“All Quebec residents who, from the date upon which the Defendants began performing currency conversions in Quebec, purchased goods or services using the Defendants’ payment system in a currency other than the currency in which the goods or services were offered for sale (the “**Transaction Class**”); and

All Quebec consumers who, from the date upon which the Defendants began performing currency conversions in Quebec, purchased goods or services using the Defendants’ payment system in a currency other than the currency in which the goods or services were offered for sale (the “**Transaction Consumer Sub-Class**”); and

All Quebec residents who held accounts with PayPal Canada, who, from the date upon which the Defendants began performing currency conversions in Quebec, withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring the funds to the individuals’ linked bank accounts and credit cards (the “**Withdrawal Class**”); and

All Quebec consumers who held accounts with PayPal Canada, who, from the date upon which the Defendants began performing currency conversions in Quebec, withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring the funds to the individuals’ linked bank accounts and credit cards (the “**Withdrawal Consumer Sub-Class**”).”

3. The Plaintiff, in her Application, alleges three main reproaches against the Defendants:
- (a) That the Defendants charged Undisclosed FX Transaction Fees when performing the currency conversion in respect of all purchases made using their payment systems;
  - (b) That the Defendants did not permit putative Class Members, upon checkout, to elect to have their credit card issuer perform the currency conversion for their transactions; and
  - (c) That the Defendants unilaterally and automatically converted any foreign currency held by PayPal accountholders upon withdrawal and that the Defendants charged putative Class Members Undisclosed FX Withdrawal Fees.
4. The Plaintiff’s action is rooted in contractual claims, as well as claims pursuant to the Competition Act and the Consumer Protection Act.
5. The Plaintiff is seeking reimbursement of:

- (a) alleged undisclosed fees charged by the Defendants in connection with the exchange of currency in transactions effected using the Defendants' payment system;
  - (b) alleged undisclosed fees in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants;
- or, in the alternative:
- (c) an accounting and disgorgement of all profits the Defendants earned in connection with foreign exchange transactions in respect of the putative Class Members.

6. Plaintiff is also claiming \$2 million in punitive damages on behalf of the Transaction Consumer Sub-Class and the Withdrawal Consumer Sub-Class pursuant to the Consumer Protection Act.

**C. The Defendants' Right to a Full Answer and Defence with respect to the Criteria of Article 575 C.C.P.**

- 7. The Defendants have the right to a full answer and defence in the context of their contestation of the Application and with respect to each of the criteria listed at article 575 C.C.P., which have to be analyzed by the Court in order to determine whether the proposed class action should be authorized.
- 8. Article 574 C.C.P. empowers this Court to authorize the presentation of appropriate evidence relevant to the analysis of the criteria set out at article 575 C.C.P.

**D. The Affidavit of Omar Paz**

- 9. At paragraph 38 of the Application, the Plaintiff alleges that there is a difference between the "Inflated Class Rate" (exchange rate applied to the putative Class Members' transactions) and the "PayPal Rate" (effective exchange rate obtained by the Defendant for foreign exchange transactions).
- 10. Paragraphs 4 and 5 of the Affidavit of Omar Paz, communicated herewith as **Exhibit D-1**, provide this Court with an explanation of the manner in which the foreign exchange rates offered to PayPal Canada Co. and PayPal CA Limited (collectively "**PayPal**")'s Quebec customers were obtained since the date PayPal began offering currency conversion services to Quebec customers.
- 11. Paragraph 6 of the Affidavit D-1 affirms that prior to January 14, 2017, there was never an "Inflated Class Rate" as defined in paragraph 38 of the Application and that PayPal never charged a base foreign exchange rate to its Quebec customers that was higher than the cost to purchase the foreign currency.
- 12. The Affidavit D-1 therefore completes and corrects the Plaintiff's allegations, will permit the Court to decide, inter alia, whether the facts alleged by the Plaintiff appear to justify the conclusions sought (criterion 2 of article 575 C.C.P.) and will give the Court an accurate picture of the period covered by the proposed class action.

## **E. The Affidavit of Amy Stohlman**

13. The Affidavit of Amy Stohlman, communicated herewith as **Exhibit D-2**, touches upon three (3) main subjects: the User Agreements, the alleged obligation to allow credit card issuers to perform the currency conversion, and the absence of involvement of Defendant PayPal Holdings Inc.
  - **The User Agreements**
14. The Plaintiff applies to bring a class action largely based upon contractual provisions, for which she only provides this Court with three (3) User Agreements :
  - (a) The 2013 User Agreement (Exhibit P-4);
  - (b) The 2014 User Agreement (Exhibit P-5); and
  - (c) The 2017 User Agreement (Exhibit P-6).
15. At paragraphs 29 to 31 of the Application, the Plaintiff inaccurately alleges the dates during which the User Agreements Exhibits P-4 to P-6 were in effect.
16. Paragraphs 5, 6, 7 and 8 of the Affidavit D-2, as well as the User Agreements filed in support of the Affidavit D-2, Exhibits AS-1 to AS-47, provide clarifications to this Court as to the different versions, since June 20, 2007, of the User Agreement; they also correct and complete the Plaintiff's allegations in this respect.
17. The Affidavit D-2 and Exhibits AS-1 to AS-47 will give the Court an accurate and complete picture of the relevant contractual terms, which will in turn permit the Court to decide, *inter alia*, whether the facts alleged by the Plaintiff appear to justify the conclusions sought (criterion 2 of article 575 C.C.P.).
  - **Alleged Obligation to Allow Credit Card Issuers to Perform the Currency Conversion**
18. At paragraph 58 of the Application, the Plaintiff alleges that: “[t]he Defendants have systematically breached their contracts with the Class Members, including by: [...] b. failing to permit Class Members’ (sic) using the PayPal payments system to elect, on checkout, to have their credit card issuers and not the Defendants, perform currency conversions for transactions using their system; [...]”, without alleging the extent of this alleged obligation.
19. Paragraphs 10 to 12 of the Affidavit D-2 provide that the relevant contractual stipulation came into effect on May 15, 2014, and that, prior to that date, the putative Class Members specifically authorized PayPal to perform the conversions in place of their credit card issuer.
20. The Affidavit D-2 and Exhibits AS-1 to AS-47 therefore complete and correct the Plaintiff's allegations, will permit the Court to decide, *inter alia*, whether the facts alleged by the Plaintiff appear to justify the conclusions sought (criterion 2 of article 575 C.C.P.) and will give the Court an accurate picture of the period covered by the proposed class action.

21. Exhibits AS-4 to AS-28 are also necessary for the Court to decide on the *Application of the Defendants in Declinatory Exception.*

- **PayPal Holdings Inc.**

22. The Plaintiff has named PayPal Holdings Inc. as a Defendant to the Application.

23. At paragraph 7 of the Application, the Plaintiff alleges that PayPal Holdings Inc. and its affiliates provide online payment services for over 250 million PayPal account holders in over 200 countries.

24. Paragraph 8 of the Affidavit D-2 provides that PayPal Holdings Inc. is not a party to the User Agreements.

25. Paragraph 4 of the Affidavit D-2 provides that PayPal CA Limited and PayPal Canada Co. provide(d) and operate(d) the online payment systems used by the putative Class Members.

26. The Affidavit D-2 therefore completes the Plaintiff's allegations regarding the alleged involvement of PayPal Holdings Inc. and will permit the Court to decide whether the facts alleged by the Plaintiff regarding this Defendant appear to justify the conclusions sought (criterion 2 of article 575 C.C.P.).

#### **F. The Affidavit of Ryan May**

27. Throughout the Application, the Plaintiff assumes either that the services offered are provided to the putative Class Members on one platform or that the multiple platforms on which PayPal offers its services are all the same.

28. Paragraphs 6 to 8 of the Affidavit of Ryan May, communicated herewith as **Exhibit D-3**, provide that PayPal operates its online payment service on multiple different platforms, of which each platform has between two (2) and four (4) different display variations or "checkout flows", totaling an approximate twenty-six (26) different PayPal Flows.

29. At paragraph 26 of the Application, the Plaintiff inaccurately alleges that all transactions using the PayPal payment systems are subject to a User Agreement.

30. Paragraphs 9 to 11 of the Affidavit D-3 provide that not all transactions are subject to the User Agreement.

31. The Plaintiff alleges that the Defendants did not permit the putative Class Members to elect, on checkout, to have their credit card issuers perform the currency conversions for their transactions.

32. Paragraph 12 of the Affidavit D-3 seeks to introduce a video filmed on April 4, 2018, Exhibit RM-1, which shows the step-by-step process of a customer using the most frequently used platform by Quebec customers from January 2014 to August 2018, Hermes Logged-in User, on a desktop.

33. Exhibit RM-1 shows that the platform Hermes Logged-in User accessed via desktop offers the customer to elect, on checkout, to have his or her credit card issuer perform the currency conversions for the transaction.
34. The Affidavit D-3 therefore completes and corrects the Plaintiff's allegations regarding the various situations potentially covered by the proposed class action and the applicable contractual terms, and will permit the Court to decide whether the claims of the putative class members raise identical, similar or related issues of law or facts and whether the facts alleged by the Plaintiff appear to justify the conclusions sought (criteria 1 and 2 of article 575 C.C.P.).

#### **G. The Affidavit of Brian Yamasaki**

35. The Plaintiff has named PayPal Holdings Inc. as a Defendant to the Application.
36. PayPal Holdings Inc. is a corporation organized pursuant to the laws of Delaware and whose head office is in San Jose, California, as appears from Exhibit P-1.
37. At paragraph 6 of the Application, the Plaintiff alleges that PayPal Holdings Inc. operates a global technology platform that processes online payment transactions around the world.
38. At paragraph 7 of the Application, the Plaintiff alleges that PayPal Holdings Inc. and its affiliates provide online payment services for over 250 million PayPal account holders in over 200 countries.
39. The paragraph 3 of the Affidavit of Brian Yamasaki, communicated herewith as **Exhibit D-4**, provides that PayPal Holdings Inc. does not provide financial services, including online payment services, in Canada.
40. The Affidavit D-4 therefore completes the Plaintiff's allegations regarding PayPal Holdings Inc. and will permit the Court to decide whether the facts alleged by the Plaintiff regarding this Defendant appear to justify the conclusions sought (criterion 2 of article 575 C.C.P.).

#### **Conclusion**

41. In order to complete and correct the allegations and exhibits put forward by the Plaintiff in the Application and to allow the Defendants to properly present their arguments with respect to the criteria of article 575 C.C.P., the Defendants respectfully request that this Court grants leave to adduce into evidence the Affidavits D-1 to D-4 as well as Exhibits AS-1 to AS-47 and RM-1 prior to the hearing on the Application.
42. The Affidavits D-1 to D-4, Exhibits AS-1 to AS-47, and Exhibit RM-1 are necessary to determine whether the criteria of article 575 C.C.P. are met in the present case.
43. Allowing (...) the Affidavits D-1 to D-4 as well as Exhibits AS-1 to AS-47 and RM-1 (...) to be adduced will focus the legal debate.
44. (...)

45. The order sought meets the criterion of proportionality.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Application;

**AUTHORIZE** the Defendants to file the affidavits of Omar Paz dated August 6, 2018 (Exhibit D-1), Amy Stohlman dated August 28, 2018 (Exhibit D-2), Ryan May (Exhibit D-3) dated August 29, 2018, and Brian Yamasaki, dated August 28, 2018 (Exhibit D-4) into the Court Record (...), prior to the Hearing on the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff;

**AUTHORIZE** the Defendants to file the 47 versions of the User Agreement since June 20, 2007 (Exhibits AS-1 TO AS-47) into the Court Record prior to the Hearing on the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff;

**AUTHORIZE** the Defendants to file the video filmed on April 4, 2018 (Exhibit RM-1) into the Court Record prior to the Hearing on the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff;

**THE WHOLE** without cost, unless contested.

Montreal, this August 30, 2018

*McCarthy Tétrault L.L.P.*

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**MCCARTHY TÉTRAULT LLP**

Me Mason Poplaw

Me Andrée-Anne Labbé

Lawyers for Defendants

2500 - 1000 De La Gauchetière Street West

Montreal (Quebec) H3B 0A2

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514-397-5690

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**ALL NOTIFICATIONS BY E-MAIL MUST BE ADDRESSED  
SOLELY TO NOTIFICATION@MCCARTHY.CA**

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-and-

**PAYPAL HOLDINGS INC.**

Defendants

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**AFFIDAVIT OF OMAR PAZ**

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I, the undersigned, Omar Paz, Head of Capital Markets - Investments and Foreign Exchange, at PayPal Inc., whose business address is 2211 North First Street, San Jose, California, 95131, having been duly sworn, do hereby solemnly affirm as follows:

1. I am currently the Assistant Treasurer and Head of Capital Markets - Investments and Foreign Exchange at PayPal Inc. and have been holding this position (or other finance positions) since December 2007 (including prior parent, eBay Inc.). I am responsible for overseeing the team who sources foreign exchange rates for PayPal to offer currency conversion services to customers.
2. I and my team provide support functions, including currency conversion support functions to PayPal Canada Co. and PayPal CA Limited (collectively "**PayPal**").
3. I am familiar with PayPal's business practices and decisions with respect to foreign exchange rates offered to its Québec customers.
4. In 2003, a contract was entered into with the Royal Bank of Scotland ("**RBS**") and, in 2011, a second contract was entered into with CitiBank ("**Citi**"), pursuant to which currency rates were obtained with these two institutions.



5. Prior to January 14, 2017, PayPal passed the base rate obtained pursuant to these contracts directly on to its Québec customers, as increased only by the Currency Conversion Fee disclosed in the User Agreement. More specifically:
  - (a) Between 2003 and 2011, foreign currency rates were obtained exclusively from RBS and the rate provided to PayPal by RBS was the base rate provided to PayPal's Québec customers.
  - (b) From 2011 to 2017, foreign currency rates were obtained from both RBS and Citi. The base rate provided to PayPal's Québec customers was a blended rate that reflected the rates provided by the two institutions. The amounts traded with both RBS and Citi matched the weightings of rates.
6. As a result, prior to January 14, 2017, there was never an "Inflated Class Rate" as defined in paragraph 38 of the *Application for Authorization to Institute a Class Action and to Appoint the Status of a Representative Plaintiff* dated February 28, 2018. PayPal never charged a base foreign exchange rate to its Québec customers that was higher than the cost to purchase the foreign currency.
7. All of the facts alleged in the present Affidavit are true.

**AND I HAVE SIGNED:**

  
OMAR PAZ

Solemnly affirmed before me in \_\_\_\_\_,

\_\_\_\_\_, this \_\_\_\_\_ day of August 2018

\_\_\_\_\_  
Notary Public

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Santa Clara )

On August 6, 2018 before me, Cynthia S. Martinez, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Omar Paz  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Cynthia S. Martinez  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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Plaintiff

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**PAYPAL CANADA CO.**

-and-

**PAYPAL CA LIMITED**

-and-

**PAYPAL HOLDINGS INC.**

Defendants

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**AFFIDAVIT OF AMY STOHLMAN**

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I, the undersigned, Amy Stohlman, Project Manager at **PayPal, Inc.**, whose headquarters is located at 2211 North First Street, San Jose, CA 95131, having been duly sworn, do hereby solemnly affirm as follows:

1. PayPal, Inc. ("**PPI**") is an indirect parent of PayPal Canada Co.
2. I started at PPI in February 2001 and have held numerous positions within the company including Lead Project Manager within the Enterprise Risk, Compliance & Security Sanctions division and Lead Project Manager within the Global Compliance Operations division.
3. Since January 2018, I have been the User Agreement Project Manager in PPI's Legal Department with the responsibility of managing the processes of publication, maintenance, and editing of User Agreements for certain PayPal entities including PPI and Defendant PayPal Canada Co.

## User Agreements

4. PayPal CA Limited and PayPal Canada Co. are (or were) incorporated pursuant to Canadian laws, as appears from the CIDREQ communicated by Plaintiff as Exhibit P-2 and P-3, and they provide(d) and operate(d) the online payment systems used by the putative class members.
5. I have conducted a business records search to locate all the User Agreements covered by the putative class period as currently described in the *Application for Authorization to Institute a Class Action and to Appoint the Status of a Representative Plaintiff* dated February 28, 2018 (the “**Application**”).
6. PayPal Canada Co. and PayPal CA Limited (collectively “**PayPal**”) have used 47 different versions of its User Agreement applicable to Québec customers between June 21, 2007, and the present.
7. The 47 versions of the User Agreement, copies of which are filed herewith in support of the present Affidavit as **Exhibits AS-1 to AS-47**, are as follows, defined by the date in which they became effective:
  - (a) CA UA – 06-20-2007 (**Exhibit AS-1**);
  - (b) CA UA – 07-29-2007 (**Exhibit AS-2**);
  - (c) CA UA – 10-25-2007 (**Exhibit AS-3**);
  - (d) CA UA – 07-09-2008 (**Exhibit AS-4**);
  - (e) CA UA – 09-03-2008 (**Exhibit AS-5**);
  - (f) CA UA – 11-10-2008 (**Exhibit AS-6**);
  - (g) CA UA – 02-11-2009 (**Exhibit AS-7**);
  - (h) CA UA – 04-08-2009 (**Exhibit AS-8**);
  - (i) CA UA – 06-03-2009 (**Exhibit AS-9**);
  - (j) CA UA – 08-19-2009 (**Exhibit AS-10**);
  - (k) CA UA – 10-14-2009 (**Exhibit AS-11**);
  - (l) CA UA – 01-21-2010 (**Exhibit AS-12**);
  - (m) CA UA – 03-10-2010 (**Exhibit AS-13**);
  - (n) CA UA – 07-13-2010 (**Exhibit AS-14**);
  - (o) CA UA – 09-22-2010 (**Exhibit AS-15**);

- (p) CA UA – 11-01-2010 (**Exhibit AS-16**);
- (q) CA UA - 05-11-2011 (**Exhibit AS-17**);
- (r) CA UA – 05-24-2011 (**Exhibit AS-18**);
- (s) CA UA - 04-01-2012 (**Exhibit AS-19**);
- (t) CA UA - 10-06-2012 (**Exhibit AS-20**);
- (u) CA UA - 11-08-2012 (**Exhibit AS-21**);
- (v) CA UA – 10-10-2013 (**Exhibit AS-22**);
- (w) CA UA – 10-22-2013 (**Exhibit AS-23**);
- (x) CA UA - 03-25-2014 (**Exhibit AS-24**);
- (y) CA UA - 05-15-2014 (**Exhibit AS-25**);
- (z) CA UA - 10-08-2014 (**Exhibit AS-26**);
- (aa) CA UA - 01-07-2015 (**Exhibit AS-27**);
- (bb) CA UA - 05-01-2015 (**Exhibit AS-28**);
- (cc) CA UA - 07-01-2015 (**Exhibit AS-29**);
- (dd) CA UA - 07-02-2015 – revised (**Exhibit AS-30**);
- (ee) CA UA - 07-14-2015 – revised (**Exhibit AS-31**);
- (ff) CA UA - 01-04-2016 (**Exhibit AS-32**);
- (gg) CA UA - 01-11-2016 – revised (**Exhibit AS-33**);
- (hh) CA UA - 06-25-2016 (**Exhibit AS-34**);
- (ii) CA UA - 04-12-2017 (**Exhibit AS-35**);
- (jj) CA UA - 05-25-2017 – revised (**Exhibit AS-36**);
- (kk) CA UA - 07-07-2017 (**Exhibit AS-37**);
- (ll) CA UA - 08-01-2017 – revised (**Exhibit AS-38**);
- (mm) CA UA - 08-14-2017 – revised (**Exhibit AS-39**);
- (nn) CA UA - 08-18-2017 – revised (**Exhibit AS-40**);
- (oo) CA UA - 09-17-2017 (**Exhibit AS-41**);

- (pp) CA UA - 09-20-2017 – revised (**Exhibit AS-42**);
- (qq) CA UA - 09-29-2017 (**Exhibit AS-43**);
- (rr) CA UA - 10-02-2017 – revised (**Exhibit AS-44**);
- (ss) CA UA - 10-10-2017 (**Exhibit AS-45**);
- (tt) CA UA – 05-01-2018 (**Exhibit AS-46**);
- (uu) CA UA – 08-09-2018 (**Exhibit AS-47**);

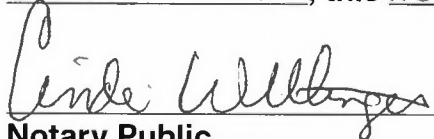
Collectively the “**User Agreements**”.

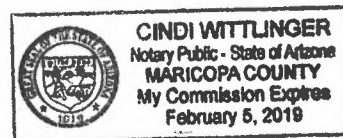
8. PayPal Holdings Inc. is not a party to the User Agreements.
9. After a diligent and exhaustive review, I could not locate any User Agreements applicable to Québec customers prior to June 20, 2007. I am informed and believe that PayPal no longer has access to these User Agreements.
10. Throughout the Application, Plaintiff alleges that PayPal did not permit the putative class members to elect, on checkout, to have their credit card issuers perform the currency conversions for their transactions.
11. The relevant wording concerning this alleged obligation was not present in the User Agreements until May 15, 2014, at which point it was added to Section 8.8 of the User Agreements.
12. Prior to May 15, 2014, the User Agreements specifically authorized PayPal to perform currency conversions for consumer transactions in place of their credit card issuer, as appears from Section 8.8 of the User Agreements AS-25 and following.
13. All of the facts alleged in the present Affidavit are true.

**AND I HAVE SIGNED:**

  
 \_\_\_\_\_  
**AMY STOHLMAN**

Solemnly affirmed before me at Maricopa County,  
State of Arizona, this 28 th day of August 2018

  
 \_\_\_\_\_  
**Notary Public**



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-and-

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Defendants

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**AFFIDAVIT OF RYAN MAY**

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I, the undersigned, Ryan May, Head of Technology and Business Solutions at **PayPal Canada Co.**, whose business address is 661 University Ave., Suite 506 in the City of Toronto, in the Province of Ontario, having been duly sworn, do hereby solemnly affirm as follows:

1. Defendant PayPal Canada Co. ("**PayPal Canada**") provides financial services, including online payment services, in Canada.
2. I joined PayPal Canada in 2013 as Senior Solutions Manager, Merchant Products.
3. As such, my job responsibilities included: managing all merchant facing products in Canada, providing regional launch support for checkout products, collecting feedback from Canadian small businesses in relation to our product offerings and monitoring the performance of existing and new product offerings.
4. I have been the Head of Technology and Business Solutions since June 2017.

5. As such, in addition to the responsibilities referred to at paragraph 3, I am the developer product contact for Canada and oversee strategic product partnerships and technical product consulting.
6. PayPal operates its online payments service on multiple different platforms.
7. Each platform has between two (2) and four (4) different display variations, known as "checkout flows". Customers see different checkout flows depending on the device and software with which they access the platform. Specifically, a platform may show: (i) one checkout flow when the platform is accessed through a web browser on a desktop or laptop computer; (ii) another checkout flow when the platform is accessed through a web browser on a mobile device such as a smartphone or tablet; (iii) yet another checkout flow when the platform is accessed through an "app" other than a web browser on a mobile device running the Apple "iOS" operating system; and (iv) still another checkout flow when the platform is accessed through an "app" other than a web browser on a mobile device running the Google "Android" operating system.
8. In total, taking into account the multiple platforms and the different checkout flows, there are approximately twenty-six (26) unique ways in which a customer can access PayPal's services ("**PayPal Flows**").
9. Some of the transactions completed using the PayPal payment system are not subject to PayPal's User Agreement.
10. Indeed, not all of the PayPal Flows require the customer to agree to PayPal's User Agreement.
11. Therefore, any transaction completed by a customer who is not a PayPal accountholder, using a PayPal Platform that does not require the customer to agree to PayPal's User Agreement, is not subject to PayPal's User Agreement.
12. From January 2014 to August 2018, the most frequently used platform by Québec customers is Hermes Logged-in User, which provides the customers bound by the PayPal User Agreement with the option of having their credit card issuer perform the currency conversion at checkout, rather than PayPal. This PayPal Flow was depicted in a video that I filmed on April 4, 2018 showing the step-by-step process of a customer using the Hermes Logged-in User Platform on a desktop, filed herewith in support of the present affidavit as **Exhibit RM-1**.
13. All of the facts alleged in the present Affidavit are true.

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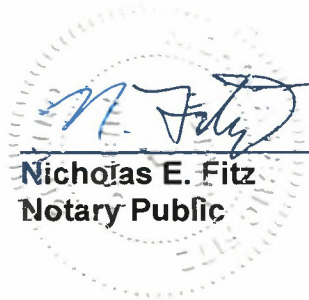
**AND I HAVE SIGNED:**

**RYAN MAY**



**Solemnly affirmed before me at Toronto,**

**Ontario, this 29th day of August 2018**



**Nicholas E. Fitz  
Notary Public**

**SUPERIOR COURT  
(Class Action)**

**CANADA  
PROVINCE OF QUEBEC  
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**No.: 500-06-000910-188**

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-and-

**PAYPAL HOLDINGS INC.**

Defendants

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**AFFIDAVIT OF BRIAN YAMASAKI**

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I, the undersigned, Brian Yamasaki, Corporate Secretary, at **PayPal Holdings Inc. ("PPH")**, whose business address is 2211 N 1st St. San Jose, CA 95131, having been duly sworn, do hereby solemnly affirm as follows:

1. I have been the Corporate Secretary at PPH since September 28, 2016.
2. PPH is the indirect parent of PayPal Canada Co. and, from May 2015 to July 2016, was the indirect parent of PayPal CA Limited.
3. PPH does not directly provide financial services, including online payment services, in Canada. These services are provided in Canada exclusively by PPH's indirect subsidiary PayPal Canada Co., which was formed in July 2016 by a merger of PayPal CA Ltd. and another Canadian PayPal entity, PayPal Services Canada Ltd.
4. All of the facts alleged in the present Affidavit are true.

AND I HAVE SIGNED:



BRIAN YAMASAKI

Solemnly affirmed before me at \_\_\_\_\_,

\_\_\_\_\_, this \_\_\_\_\_<sup>22</sup>th day of August 2018

*please see attached.*

\_\_\_\_\_  
Notary Public

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

1 \_\_\_\_\_

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6 \_\_\_\_\_

Signature of Document Signer No. 1

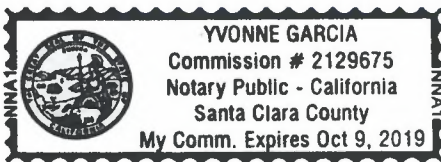
Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Santa Clara

Subscribed and sworn to (or affirmed) before me  
 on this 28<sup>th</sup> day of August, 2018,  
 by Brian Yamasaki  
 (1) \_\_\_\_\_  
 (and (2) \_\_\_\_\_),

Name(s) of Signer(s)



proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature \_\_\_\_\_  
 Signature of Notary Public

Seal  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

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